IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO.6766 OF 2005

Shri Madhukar Rajaram Jadhav ..Petitioner

Versus

Shri A. Gafoor Daud Tambe ..Respondent

Mr.V.S.Paradkar for petitioner

Mr.G.S.Godbole for respondent

CORAM : P.V.KAKADE, J.

DATE : 1ST FEBRUARY, 2006.

P.C.:

1. The Petitioner has preferred this petition against the judgment and order passed by Addl. District Judge, Khed dated 17.6.2005 allowing the appeal and setting aside the judgment and order passed by the trial court in Regular Civil Suit No.4 of 2001 and decreed the suit for possession of the suit premises under the provisions of the Maharashtra Rent Control Act.

2. I have heard the learned counsel for both the parties. Perused the record.

3. It must be noted initially that earlier the suit came to be filed by the respondent landlord on the ground of reasonable and bonafide requirement as well as non-user of the suit premises and arrears of rent and permitted increases to the landlord of the suit premises. However, the trial judge after hearing both the parties and recording the evidence came to the conclusion that the suit was liable to be dismissed and dismissed the suit by order dated 1.4.2003.

. The appeal was carried out to the Court of Addl. District Judge, Khed, who after hearing both the parties came to the conclusion that it was not required to adjudicate the issue involved in respect of reasonable and bonafide requirement as well as non user of the suit by the petitioner, the dispute could be adjudicated only on the question of arrears of rent. The learned lower appellate court came to the conclusion on the basis of available evidence that the petitioner failed to prove that he was ready and willing to pay the standard rent and

permitted increases. It was also held that there was no compliance by the petitioner as contemplated under Section 15(3) of the Maharashtra Rent Control Act, 1999 and as such the suit came to be decreed on the ground that the petitioner-tenant had committed default in payment of rent for more than six months and has not complied with Section 15(3) of the said Act. Hence the present petition.

4. As can be seen from the record and as submitted on behalf of the petitioner, the issue was sought to be raised that there was no termination of tenancy by notice under Section 15(2) of the Maharashtra Rent Control Act. However, it is needless to mention that now it is settled legal position that where a suit is to be filed on the ground of default notice of demand and not a notice of termination of tenancy is necessary. The record further shows that the notice dated 11.8.2000 was issued which was clear enough to show that there was demand of the arrears of rent which was due from 1.7.1998 along with permitted increases and therefore, the entire amount of Rs.650/= was demanded. The learned counsel for the petitioner also sought to raise issue in respect of service of notice. However, both the courts below have come to the conclusion that there was sufficient service of the notice on the

petitioner, and therefore, the suit cannot be rendered bad for want of notice of demand as contemplated by Section 15(2) of the Act. Further it is quite apparent that there is no compliance with the provisions of Section 15(3) of the Maharashtra Rent Control act.

5. Be as it may, the fact remains that the lower appellate court has rightly considered all the aspects with regard to the evidence so as to come to the conclusion that the petitioner is liable to be evicted from the suit premises on the ground that he has committed default in payment of rent and permitted increases and he is not entitled to the protection contemplated under Section 15(3) of the Maharashtra Rent Control Act and as such I do not see any reason to interfere in the order of the lower appellate court. In the result the petition stands dismissed with no order as to costs.

6. At this stage the learned counsel for the petitioner submitted that taking into account the position and conditions in which the petitioner is living, sufficient time should be granted for him to obtain alternative accommodation and to vacate the suit premises. In view of the facts and circumstances, the petitioner is

directed to vacate the suit premises by the end of June 2006 and hand over vacant and peaceful possession thereof to the respondent on conditions that he shall execute Undertaking to that effect to this Court within four weeks from the date of this order and further the petitioner and all other adult members of the family should not create third party interest in the meantime and also furnish undertaking to that effect to this Court.